SUPREME COURT OF THE UNITED STATES.

No. 928.

WILLIAM ASHBURNER, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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1 *Complaint.*

In the superior court in and for the county of Sacramento.

THE PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
WILLIAM ASHBURNER, DEFENDANT.

The people of the State of California, by A. L. Hart, their attorney-general, complain of William Ashburner, and for cause of action allege that the said defendant, William Ashburner, on the first day of May, 1880, usurped the office of a member of the board of commissioners known as the "Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove," and has since unlawfully withheld the
2 said office and wrongfully continued to discharge the duties thereof.

Wherefore the plaintiffs demand judgment that the said defendant, William Ashburner, is not entitled to the said office, and that he be ousted therefrom.

A. L. HART,
Attorney General.

(Indorsed:) Filed June 10th, 1880. T. H. Berkey, clerk.

Answer.

(Title of court and cause.)

Comes now the said defendant, William Ashburner, and for answer to the complaint of the said plaintiffs, the people of the State of California, says that he denies each and every allegation in said complaint contained.

Wherefore he prays to be hence dismissed with his costs, etc.

RHODES AND BARSTOW,
Attorneys for the Defendant.

(Indorsed:) Filed June 10th, 1880. T. H. Berkey, clerk.

I do hereby admit service of a copy of the within answer this 3 day of June, 1880.

A. L. HART,
Attorney-General.

3 *Findings.*

(Title of court and cause.)

The above-entitled action came on for trial before the court, the plaintiffs appearing by the attorney-general, and the defendant appearing by Rhodes & Barstow, his attorneys, and a jury having been waived, the court proceeded to try the issues arising upon the pleadings.

The said parties introduced in evidence the stipulation hereto annexed, marked Exhibit A, and then and there submitted said cause to the court for decision, upon the pleadings and said stipulation; and the court finds that each and all of the facts recited in said stipulation is and are

true; and the court finds, as a conclusion of law, from the facts stated in said stipulation, that the said defendant, as a member of the board of commissioners mentioned in the act of Congress referred to in said stipulation, and the act of the legislature of this State, approved April 2nd, 1866, referred to in said stipulation, and who was appointed as a member of said board of commissioners under and in pursuance of said acts by the governor of this State, neither was nor is an officer of this State within the meaning of the statutes of this State.

Second. That the plaintiffs are not entitled to the relief prayed for in the complaint.

4 Third. That the defendant is entitled to judgment; that he go hence without day.

S. C. DENSON,
Judge of the Superior Court, County of Sacramento.

(Indorsed:) Filed June 10, 1880. T. H. Berkey, clerk.

5 EXHIBIT A.

In the superior court of the State of California in and for the county of Sacramento.

THE PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
WILLIAM ASHBURNER, DEFENDANT.

For the purpose of the trial and determination of the above entitled action, the parties hereto do hereby stipulate that the following statement of facts involved in said action is true. That the statement may be introduced in evidence by either party; that the said parties respectively waive all objection to its introduction in evidence, on the ground that the facts therein contained, or any of them, are not specially pleaded.

The facts so agreed to for the purpose aforesaid are as follows:

I.

That under and in pursuance of the act of Congress, entitled "An act authorizing a grant to the State of California, of the Yosemite Valley, and the land embracing the Mariposa Big Tree Grove," ap-

6 proved June 30th, 1864, and also an *an* act of the legislature of said State, entitled, "An act to accept the grant by the United States Government to the State of California, of the Yosemite Valley and Big Tree Grove, and to organize the board of commissioners, and to fully empower them to carry out the objects of the grant, and fulfil the purposes of the trust," approved April 2nd, 1866, Frederick F. Low, the governor of said State, appointed as the commissioners, provided for in said acts, Frederick Law Olmstead, Professor J. D. Whitney, William Ashburner, I. W. Raymond, E. S. Holden, Alexander Deering, George W. Coulter, and Galen Clark.

II.

That certain of the persons so appointed as commissioners as aforesaid ceased to be or act as such commissioners by reason of their death or resignation, and other persons were duly appointed by the governor

to fill the places so becoming vacant; that the persons so appointed severally accepted such appointments, and that at the time of the passage of the act of the legislature of this State, entitled "An act to provide for the management of the Yosemite Valley and the Mariposa Big Tree Grove," approved April 15th, 1880, William Ashburner, I. W. Raymond, E. S. Holden, Galen Clark, Edgar Mills, Thomas
7 Madden, William H. Priest, and H. W. Cleveland were, together with the governor of said State, acting as such commissioners.

III.

That they and each of them had been duly appointed as such commissioners by the governor of this State, by virtue of the authority conferred upon him by the said act of Congress and said act of the legislature of this State, first above mentioned.

IV.

That heretofore, to wit, on the 19th day of April, 1880, after the adoption of "Senate concurrent resolution No. 20, relating to appointment of eight commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove," adopted February 17th, 1880, and the passage of the act of the legislature of this State, entitled "An act to provide for the management of the Yosemite Valley and the Mariposa Big Tree Grove," approved April 15th, 1880, the governor of said State, in pursuance of said Senate concurrent resolution and of said act, and by virtue of the authority therein and thereby conferred upon him, appointed I. W. Raymond, J. P. Jackson, M. C. Briggs, William H. Mills, George H. Laid, W. C. Priest, A. J. Meany, and James L. Sperry,
8 as such commissioners, and each of them accepted such appointment, and took, subscribed, and filed an oath of office in the manner and form prescribed by law for the officers of the government of said State.

V.

That more than four years had elapsed after the appointment by the governor of each of the persons mentioned in the first and second paragraphs above written, and before the passage of said act of the legislature passed April 15th, 1880.

That neither the said defendant nor any one of the said persons last aforesaid had been reappointed as such commissioner after their respective appointments as aforesaid.

That each of the said commissioners so appointed on the 19th day of April, 1880, and the board composed of said commissioners, duly demanded of said William Ashburner that he surrender said office and cease to discharge the duties thereof; but the said Ashburner refused and still refuses to comply with such demand—the said demand having been made after the qualification of said commissioners and before the commencement of this action.

9 VI.

The said defendant has, ever since the passage of the said act last aforesaid, continued to discharge the duties of such commissioner as first aforesaid, and has during all that time claimed, and still claims, that he

is by law entitled to be such commissioner, and to be a member of said board of commissioners as organized and existing at the time of the passage of said last-mentioned act, and to exercise and discharge all the powers, authority, and duties of such commissioner, and of a member of such board of commissioners; he claiming and insisting that said board of commissioners, and the members thereof, continue to be and are such board, and the members thereof notwithstanding the passage of said act, approved April 15th, 1880, and the alleged appointment by the governor of the members of the board of commissioners, on the 19th day of April, 1880, as mentioned in the fourth paragraph hereof.

A. L. HART,
Attorney-General.
RHODES & BARSTOW,
Attorneys for the Defendant.

Filed June 10th, 1880.

T. H. BERKEY, *Clerk.*

10 *Judgment.*

(Title of court and cause.)

Be it remembered that this cause came on regularly for trial on the 10th day of June, 1880, and the parties by their respective counsel being present, in open court, and a jury being waived by said parties, the cause was tried by the court, and thereupon the cause was submitted to the court upon the pleadings and stipulation reciting the facts involved in said action, and the said court thereupon made and filed its findings of fact and of conclusions of law, and ordered that judgment be entered in accordance therewith.

Wherefore by reason of the law and the findings aforesaid and the premises, it is ordered and adjudged that the said plaintiffs take nothing by reason of this action as against the said defendant, and that the said defendant recover of the plaintiffs his costs, taxed at $.

Filed and entered in judgment book , page , June 10, 1880.

T. H. BERKEY, *Clerk.*

11 *Notice of appeal.*

(Title of court and cause.)

Notice is hereby given that the above named plaintiffs hereby appeal to the supreme court of said State from the judgment rendered in the above-entitled action by the said superior court, on the 10 day of June, 1880, in favor of said defendant and against said plaintiffs.

A. L. HART,
Attorney-General.

To RHODES & BARSTOW,
Attorneys for the Defendant.

Due service of the above notice of appeal after the filing thereof is hereby admitted.

RHODES & BARSTOW,
Attorneys for the Defendant.

12 *Stipulation.*

(Title of court and cause.)

It is hereby stipulated that the foregoing contains a full, true, and cor-

rect copy of the judgment-roll in the above-entitled action, and of the notice of appeal filed and served therein; and that said cause may forthwith be entered upon the calendar of the supreme court for trial.

A. L. HART,
Attorney-General.
RHODES & BARSTOW,
Attorneys for Defendant.

13 *Affidavit of service.*

STATE OF CALIFORNIA,
County of Sacramento:

George A. Blanchard, being sworn, says that he is a citizen of the U. S., over the age of twenty-one years; that he served a copy of the within & foregoing transcript on Messrs. Rhodes & Barstow, on June 10, 1880, by depositing in the post-office at Sacramento, California, said copy addressed to the Hon. A. L. Rhodes, att'y-at-law, 606 Montgomery street, San Francisco, California; that said Rhodes is att'y for the respondent in this action, and has his office, as att'y-at-law, in San Francisco, Cal.; that there is a regular daily mail between Sacramento & San Francisco aforesaid, and that said copy mailed was prepaid with U. S. postage-stamps sufficient to insure its receipt and carriage by Uncle Samuel.

GEO. A. BLANCHARD.

Subscribed and sworn to before the clerk of the supreme court, June 10th, 1880.

[SEAL OF SUPREME COURT.] F. W. GROSS, *Clerk.*
By C. N. POST, *Deputy.*

(Endorsed:) Filed June 10th, 1880, F. W. Gross, clerk; by C. N. Post, deputy.

I, Frank W. Gross, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the transcript on appeal to this court, in the case of the People of the State of California, appellants, vs. William Ashburner, respondent, #7225, as shown by the records of my office.

Witness my hand and the seal of the court, this 29th day of September, A. D. 1880.

[SEAL.] FRANK W. GROSS, *Clerk.*

14 In the supreme court of the State of California. In bank, Saturday, August 14th, 1880.

THE PEOPLE } 7225.
vs.
ASHBURNER. }

Judgment reversed and cause remanded, with directions that the court below enter judgment as prayed for in the complaint.

McKENSTRY, *J.*

Sharpstein, J., Myrick, J., McKee, J., concurring.
Thornton, J., dissenting.

I, Frank W. Gross, clerk of the supreme court of the State of Cali-

fornia, do hereby certify that the preceding and annexed is a true and cor ect copy of the judgment of this court in the case of The People of the State of California, appellants, vs. William Ashburner, respondent, #7225, as shown by the records of my office.

Witness my hand and the seal of the court this 29th day of September, A. D. 1880.

[SEAL.] FRANK W. GROSS, *Clerk.*

15 *Opinion.*

In bank.—Filed August 14th, 1880.

THE PEOPLE OF THE STATE OF CALIFORNIA *vs.* WILLIAM ASHBURNER. } No. 7225.

The complaint charges the defendant with having usurped the office of member of the board of commissioners to manage the Yosemite Valley and Mariposa Big Tree Grove. The answer is a general denial.

The case was submitted upon the agreed statement following:

I.

Under and in pursuance of the act of Congress entitled "An act authorizing a grant to the State of California of the Yosemite Valley and the land embracing the Mariposa Big Tree Grove," approved June 30th, 1864; and also an act of the legislature of said State, entitled "An act to accept the grant by the United States Government to the State of California, of the Yosemite Valley and Big Tree Grove, and to organize the board of commissioners and to fully empower them
16 to carry out the objects of the grant and fulfil the purposes of the trust," approved April 2, 1866, Frederick F. Low, the governor of said State, appointed as the commissioners provided in said acts—Frederick Law. Olmstead, Professor J. D. Whitney, William Ashburner, I. W. Raymond, E. S. Holden, Alexander Deering, George W. Coulter, and Galen Clark.

II.

Certain of the persons so appointed as the commissioners as aforesaid, ceased to be or act as such commissioners by reason of their death or resignation, and other persons were duly appointed by the governor to fill the places so becoming vacant, the persons so appointed severally accepting such appointments; and that at the time of the passage of the act of legislature of this State, entitled "An act to provide for the management of the Yosemite Valley and the Mariposa Big Tree Grove," approved April 15, 1880, William Ashburner, I. W. Raymond, E. S. Holden, Galen Clark, Edgar Mills, Thomas Madden, William H. Priest, and H. W. Cleveland, were, together with the governor of said State, acting as such commissioners.

17 III.

That they and each of them had been duly appointed as such commissioners by the governor of this State, by virtue of the authority con-

ferred upon him by the said act of Congress, and said act of the legislature of this State first above mentioned.

IV.

That heretofore, to wit, on the 19th day of April, 1880, after the adoption of "Senate concurrent resolution No. 20, relating to appointment of eight commissioners to manage the Yosemite Valley and Mariposa Big Tree Grove," adopted February 17, 1880; and the passage of the act of the legislature of this State, entitled, "An act to provide for the management of the Yosemite Valley and the Mariposa Big Tree Grove," approved April 15th, 1880, the governor of said State, in pursuance of said Senate concurrent resolution, and of said act, and by virtue of the authority therein and thereby conferred upon him, appointed I. W. Raymond, J. P. Jackson, M. C. Briggs, William H. Mills, George H. Ladd, W. C. Priest, A. J. Meany, and James L. Sperry, as such commissioners, and each of them accepted such appointment, and took, subscribed, and filed an oath of office in the manner
18 and form prescribed by law for the officers of the government of said State.

V.

More than four years had elapsed after the appointment by the governor of each of the persons mentioned in the first and second paragraphs above written, and before the passage of said act of the legislature, passed April 15, 1880.

Neither the said defendant, nor any one of the said persons last aforesaid, had been reappointed as such commissioner after their respective appointments as aforesaid.

Each of the said commissioners so appointed on the 19th day of April, 1880, and the board composed of said commissioners, duly demanded of said William Ashburner that he surrender said office and cease to discharge the duties thereof; but the said Ashburner refused, and still refuses, to comply with such demand—the said demand having been made after the qualification of said commissioners and before the commencement of this action.

VI.

Said defendant has ever since the passage of the said act last
19 aforesaid, continued to discharge the duties of such commissioner as first aforesaid, and has during all that time claimed, and still claims, that he is by law entitled to be such commissioner, and to be a member of said board of commissioners as organized and existing at the time of the passage of said last mentioned act, and to exercise and discharge all the powers, authority and duties of such commissioner, and of a member of such board of commissioners, he claiming and insisting that said board of commissioners and the members thereof continue to be and are such board, and the members thereof, notwithstanding the passage of said act, approved April 15th, 1880, and the alleged appointment by the governor of the members of the board of commissioners on the 19th day of April, 1880, as mentioned in the fourth paragraph hereof.

The act of Congress of June 30, 1864 (U. S. Stat's at Large, 1863-'4, p. 325), provides, "There shall be and is hereby granted to the State of

California the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, in the State aforesaid, and the headwaters of the Merced River, and known as the
20 Yosemite Valley, with its branches," etc., with the stipulation, nevertheless, that the said State shall accept this grant with the express conditions that the premises shall be held for public use, resort and recreation, shall be inalienable for all time, but leases not exceeding ten years may be granted for portions of said premises. All incomes to be derived from leases of privileges to be expended in the preservation and improvement of the property, or the roads leading thereto. * * * The premises to be managed by the governor of the State, with eight other commissioners, to be appointed by the executive of California, who shall receive no compensation for their services."

It will be observed that by the terms of the act of Congress the grant to the State of California was to take effect when the State should accept, with certain conditions. "With the stipulation, nevertheless, that the said State shall accept this grant with the express conditions," etc. When the act of Congress was passed there was no perfected agreement with the State; the act was a proffer to the State, and was to operate a grant provided the State should join in the stipulation that certain conditions—in the nature of conditions subsequent—should be by it assumed.

21 It is not necessary to inquire whether by any legal proceeding, based upon a forfeiture, the land could be recovered by the Federal Government in case the State should fail to comply with the obligations by it assumed with reference to the subject of the grant, or whether the Yosemite Valley passed forever to the State in reliance upon the pledged honor of the State that it should be preserved, dedicated, and managed as contemplated by the act of Congress. No provision of the act of the California legislature of April 15, 1880, has been called to our attention as being in itself a violation of any one of the conditions named in the act of Congress or of any part of the stipulation entered into by the State.

By the first section of the act of April 2, 1866 (State of California, 1865-'6, p. 710), the legislature accepted the grant for the State, "upon the conditions, reservations, and stipulations contained in said act of Congress," and thereby became bound to carry into effect the stipulation which it had entered into, and which the act of Congress had required should be entered into, as a condition to the grant becoming operative. By accepting the grant upon the stipulations contained in the act of Congress, the State assumed the duty of providing by ap-
22 propriate legislation (1) for inalienably preserving the premises for public use, resort, and recreation; (2) prohibiting leases of any portion for a longer term than ten years; (3) for the application of all "incomes" to the preservation or improvement of the property or of roads leading thereto; (4) authorizing the governor to appoint eight commissioners, who with himself shall without compensation "manage" the premises.

The fact that the legislature on the 2nd of April, 1866, discharged its duty (by legislation with reference to the several subjects with respect to which legislation was pledged by the acceptance of the grant) in the same act as that which contained the acceptance does not affect the question we are considering.

The grant was accepted, upon the conditions, etc., and the rest of the act may be treated as if it were a separate and subsequent law—a law which may be changed as often as the representatives of the people of

the State may deem it proper, provided the stipulation or pledge of the State given when the grant was accepted is not violated.

There can be no doubt that by accepting the grant the State assumed certain obligations in the nature of a trust which it would be a
23 violation of good faith to disregard. We know of no way in which these obligations can be enforced in a State court; but however this may be, we are quite certain that as yet no violation of the duties imposed upon the State by her acceptance of the grant has occurred.

It is argued by counsel for respondent that the act of Congress and the statute of the State created a "charity." In a larger sense this is true, since the legislation, national and State, while placing the legal title in the State, was intended to operate as a gift to the general public use, free from "the taint of every consideration, personal, private, and selfish." But when we inquire whether the result is a gift for charitable uses such as may be regulated, directed, and enforced by a court of equity, we are met by insurmountable obstacles to the conclusion that the matter is within any branch of equitable jurisdiction of which this court can take cognizance. It is a dedication to the public, brought about by the combined action of the Federal and State governments. The State is the trustee—if there be a trustee—but a trustee whom this court has no power to remove. We cannot enforce any decree with respect to the mode or manner in which the State shall discharge the duties it has assumed (Hill on Trustee, 49; Perry on Trusts, 40, 41).

24 The commissioners are mere agents of the State, who bear no relation (other than that borne by other citizens) to the Government of the United States, but whose duties are defined and whose powers exercised under and by virtue of State laws alone. Persons thus clothed with functions affecting the public, assigned to them by State laws, are officers of the State (33 Ga., 332; 23 Ind., 449; 12 Id., 569; 37 N. Y. 518).

The nature of the title created by the Federal and State legislation must depend simply upon the act of Congress and the State statute. Upon a reference to them we can discover but a distant analogy between the present and the cases cited in the able and ingenious brief of counsel for respondent.

In Price vs. Maxwell (38 Pa. st., 23), it was held that a devise to a school, where both rich and poor were taught, and religious was combined with literary and scientific instruction, was for charitable use. Jones vs. Williams (2 Amb., 651), was a bequest of money to be applied to the purchase of water-works for the inhabitants of a town. Held: a charitable use void by the statute of mortmain. McDonough vs. Murdock (15 How., 367) determined the validity of legacies, for
25 charities, to the cities of Baltimore and New Orleans; and held, inter alia, that the cities were authorized to take by the laws of Maryland and Louisiana. In Mitford vs. Reynolds (1 Phillips, 105), it seems to have been assumed that a devise to the "Government of Bengal" was a devise to the governor-general as an individual. In Attorney-General vs. Heelis (1 Sim. Stu., 67), it was said that a fund derived wholly from assessments under an act of Parliament, and not at all from bounty, was not a charitable fund to be administered by a court of equity. Webb vs. Neale (5 Allen, 875), and Coggeshall vs. Pelton (7 Johns. Ch., 292), decide that certain cities were competent to be trustees. In Inglis vs. Trustee of Sailor's Snug Harbor (3 Peters, 99), it was held that a bequest to the chancellor of the State of New York, was equivalent to a designation of that officer by his proper name, and the trust was to be executed

by him in his individual character. In Nightingale vs. Colbourne (2 Phil., 594), that a bequest to the chancellor of the exchequer was a bequest to the holder of the office.

It may be admitted that one may sometimes be charged as trustee who is clothed with a power with reference to real estate, although the legal title may not be invested in him. It is very possible that,
26 in a proceeding brought by the State, the Yosemite commissioners might be compelled to an accounting, etc., in case of misappropriation of funds; but this would not make them any the less officers, nor could it affect the question of the power of the legislature to provide for their removal and the appointment of other persons in their stead. The statute of April 15th, 1880, like that of April 2, 1866, provides for eight commissioners to be appointed by the governor, who, with that officer, are required to manage the property in accordance with the stipulation entered into by the State when the grant was accepted.

Inasmuch as the commissioners originally appointed were officers, their term of office expired four years after their appointment (constitution of 1849, article 10, section 7; constitution of 1879, article 20, section 16).

Judgment reversed and cause remanded with directions that the court below enter judgment as prayed for in the complaint.

McKINSTRY, *J.*

We concur.

SHARPSTEIN, *J.*
MYRICK, *J.*
McKEE, *J.*

I dissent and will hereafter file an opinion.

THORNTON, *J.*

I, Frank W. Gross, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the opinion of this court, filed August 14th, 1880, in the case of The People of the State of California, appellants, vs. William Ashburner, respondent, ✱ 7225, as shown by the records of my office.

Witness my hand and the seal of the court this 29th day of September, A. D. 1880.

[SEAL.] FRANK W. GROSS, *Clerk.*

27 *Dissenting opinion.—Filed September* 8, 1880.

PEOPLE *vs.* ASHBURNER. } No. 7225.

In this case I am unable to agree with the opinion of the court. In my judgment the grant made by the act of Congress when accepted by the State became a contract, inviolable by any act of the legislature. This seems to be the conclusion arrived at the Yosemite Valley case, in 15 Wallace, 77-91. The grants were made on conditions expressed in the act and accepted on those conditions. One of the conditions was that the premises granted were to be managed by the governor of the State, with eight other commissioners to be appointed by him. The governor made the appointment of commissioners, of which Ashburner was one. When he made the appointment of these commissioners, his function quoad the matter of appointment was at an end, except, perhaps, that

whenever a vacancy occurred by death or resignation, he might fill such vacancy. It was not intended, nor does the language of the act
28 of Congress bear any such construction, to vest in the governor any power of removal. Nor did any power vest in the legislature to affect any removal, either mediately or immediately.

If this view be correct, and in my opinion this is the fair and just interpretation of the act of Congress, the acceptance by the State made it a contract which could not be impaired by any power in the State. The State was at liberty to accept or reject the proffer made by the act of Congress, but, when it accepted, it was an act of bad faith to remove the commissioners appointed. There was no constitutional impediment to the State's entering into such an agreement.

Though it has been repeatedly held that one legislature cannot bind another on matters of mere legislation, still it has been frequently decided that this rule does not apply to contracts (Cooley's Const. Lim., 153–4, and cases there cited). A State is no exception to this rule. (State Bank vs. Knoop, 16 Howard, 386; Fletcher vs. Beck, 6 Cranch, 135; Dartmouth College vs. Woodward, 4 Wheat, 518; Tenett vs. Taylor, 9 Cranch, 43; Town of Paulett, 9 Cranch, 292.)

In my opinion the judgment should be affirmed.

THORNTON, *J.*

I, Frank W. Gross, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the dissenting opinion of Mr. Justice Thornton, filed Sept. 8, 1880, in the case of The People of the State of California, appellants, vs. William Ashburner, respondent, #7225, as shown by the records of my office.

Witness my hand and the seal of the court this 29th day of September, A. D. 1880.

[SEAL.] FRANK W. GROSS, *Clerk.*

29 *Undertaking on writ of error.—Filed September 17th*, 1880.

Supreme Court of the United States.

WILLIAM ASHBURNER, PLAINTIFF IN ERROR,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA, defendants in error.

Know all men by these presents that we, Thomas P. Madden and Israel W. Raymond, are held and firmly bound unto the said defendants in error, The People of the State of California, in the sum of one thousand dollars, to be paid to the said People of the State of California, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 16th day of September, A. D. 1880.

Whereas the above-named William Ashburner hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the supreme
30 court of the State of California.

Now, therefore, the condition of this obligation is such that if the above-named William Ashburner shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make

good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THOMAS P. MADDEN. [SEAL.]
I. W. RAYMOND. [SEAL.]

Sealed and delivered in the presence of—
A. L. RHODES.

Approved by me Sept. 17th, 1880.

R. F. MORRISON,
Chief Justice.

(Endorsed:) Filed Sept. 17th, 1880. Frank W. Gross, clerk.

I, Frank W. Gross, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the undertaking on writ of error in the case of William Ashburner, plaintiff in error, vs. The People of the State of California, defendants in error, as shown by the records of my office.

Witness my hand and the seal of the court this 29th day of September, A. D. 1880.

[SEAL.] FRANK W. GROSS, *Clerk.*

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you between William Ashburner, plaintiff in error, and The People of the State of California, defendants in error, a manifest error hath happened, to the great damage of the said plaintiff in error as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court of the United States to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 17th day of September, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the 105th.

L. S. B. SAWYER,
Clerk U. S Circuit Court Dist. Cal.

The above writ of error is hereby allowed.

R. F. MORRISON,
Chief Justice of the Supreme Court of the State of California.

(Indorsed:) United States Supreme Court. William Ashburner, pl'ff

in error, vs. The People of the State of California, def'ts in error. Writ of error. Filed Sept. 17, '80. Frank W. Gross, clerk, by C. Harlan, deputy.

32 (Original.)

UNITED STATES OF AMERICA, *ss:*

To the people of the State of California, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, District of Columbia, on the second Monday of October, A. D. 1880, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein William Ashburner is plaintiff in error, and The People of the State of California are defendants in error, to show cause, if any there be, why the judgment in the said cause mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert F. Morrison, chief justice of the supreme court of the State of California, this 17th day of September, A. D. 1880, and of the Independence of the Unitnd States the one hundred and fifth.

[SEAL] R. F. MORRISON,
Chief Justice of the Supreme Court of California.

33 (Indorsed:) United States Supreme Court. William Ashburner, pl'ff in error, vs. The People of the State of California, def't in error. Citation. Filed September 21st, 1880. F. W. Gross, clerk, by J. B. Martin, deputy.

STATE OF CALIFORNIA,
County of Sacramento, ss:

On this 20th day of September, A. D. eighteen hundred and eighty, personally appeared George A. Blanchard before me, the subscriber, and makes oath that on this day he delivered to George C. Perkins, the governor of said State, and Augustus L. Hart, the attorney-general of said State, severally, true copies of the within citation.

GEO. A. BLANCHARD.

Witness my hand and seal of supreme court of California.
Subscribed and sworn to before me this 20th day of September, 1880.

[SEAL.] C. N. POST,
Deputy Clerk Supreme Court State of California.

34 I, Frank W. Gross, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true copy of the records and proceedings of this court wherein William Ashburner is plaintiff in error and The People of the State of California are defendant' in error, the same being more particularly specified as follows: Pages 1 to 13, inclusive, contain a true and correct copy of the transcript on appeal in the case of The People of the State of California, appellants, and William Ashburner, respondent, No. 7225. Page 13¼ contains a true and correct copy of the judgment of this court in said last entitled cause. Pages 13½ to 24, inclusive, contain a true and correct copy of the opinion of this court in the determination of said last entitled cause. Pages 25 and 26 contain a true and correct copy of the dissenting opinion of Mr. Justice Thornton in the determination of said last-entitled cause. Pages 27 and 28 contain a true

and correct copy of the undertaking on writ of error to the Supreme Court of the United States in which William Ashburner is plaintiff in error and The People of the State of California are defendants in error.

Page 29 constitutes the original writ of errror in said last-entitled
35 cause, and page 30 constitutes the original citation issued under the hand of Hon. R. F. Morrison, chief justice of the supreme court of the State of California, and the seal of said court as shown by the records of my office.

Witness my hand and the seal of the court this 29th day of September, A. D. 1880.

[SEAL.] FRANK W. GROSS, *Clerk.*

(Indorsement on cover:) No. 928. William Ashburner, plaintiff in error, vs. The People of the State of California. California supreme court. Filed 8th October, 1880.

SUPREME COURT FILED
NOV 5 1880
JAMES H. McKENNEY, CLERK

OPINION

OF THE

SUPREME COURT

OF THE

STATE OF CALIFORNIA,

IN CASE OF

THE PEOPLE vs. WILLIAM ASHBURNER.

SACRAMENTO:
STATE OFFICE : : : J. D. YOUNG, SUPT. STATE PRINTING.
1880.

No. 7,228.

IN THE

SUPREME COURT

OF

THE STATE OF CALIFORNIA.

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

WILLIAM ASHBURNER.

OPINION.

The complaint charges the defendant with having usurped the office of member of the Board of "Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove." The answer is a general denial.

The case was submitted upon the agreed statement following:

I. Under and in pursuance of the Act of Congress entitled "An Act authorizing a grant to the State of California of the Yosemite Valley and the land embrac-

ing the Mariposa Big Tree Grove," approved June 30, 1864; and also an Act of the Legislature of said State, entitled "An Act to accept the grant by the United States Government to the State of California, of the Yosemite Valley and Big Tree Grove, and to organize the Board of Commissioners and to fully empower them to carry out the objects of the grant and fulfill the purposes of the trust," approved April 2, 1866, Frederick F. Low, the Governor of said State, appointed as the Commissioners provided for in said Acts: Frederick Law Olmstead, Professor J. D. Whitney, William Ashburner, I. W. Raymond, E. S. Holden, Alexander Deering, George W. Coulter, and Galen Clark.

II. Certain of the persons so appointed as Commissioners as aforesaid ceased to be or act as such Commissioners by reason of their death or resignation, and other persons were duly appointed by the Governor to fill the places so becoming vacant; the persons appointed severally accepted such appointments, and that, at the time of the passage of the Act of the Legislature of this State, entitled "An Act to provide for the management of the Yosemite Valley and the Mariposa Big Tree Grove," approved April 15, 1880, William Ashburner, I. W. Raymond, E. S. Holden, Galen Clark, Edgar Mills, Thomas Madden, Wm. H. Priest, and H. W. Cleveland were, together with the Governor of said State, acting as such Commissioners.

III. That they and each of them had been duly appointed as such Commissioners by the Governor of this State, by virtue of the authority conferred upon him by the said Act of Congress and said Act of the Legislature of this State, first above mentioned.

IV. That heretofore, to wit, on the nineteenth day of April, 1880, after the adoption of "Senate Concurrent Resolution, No. 20, relating to the appointment of eight Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove," adopted February 17, 1880; and the passage of the Act of the Legislature of this State, entitled "An Act to provide for the management of the Yosemite Valley and the Mariposa Big Tree Grove," approved April 15, 1880, the Governor of said State, in pursuance of said Senate concurrent resolution, and of said Act, and by virtue of the authority therein and thereby conferred upon him, appointed I. W. Raymond, J. P. Jackson, M. C. Briggs, William H. Mills, George H. Ladd, W. C. Priest, A. J. Meany, and James L. Sperry, as such Commissioners; and each of them accepted such appointment, and took, subscribed, and filed an oath of office, in the manner and form prescribed by law for the officers of the Government of said State.

V. More than four years had elapsed after the appointment by the Governor of each of the persons mentioned in the first and second paragraphs above written, and before the passage of said Act of the Legislature, passed April 15, 1880.

Neither the said defendant, nor any one of the said persons last aforesaid, had been reappointed as such Commissioner, after their respective appointments as aforesaid.

Each of the said Commissioners so appointed on the nineteenth day of April, 1880, and the Board composed of said Commissioners, duly demanded of said William Ashburner that he surrender said office and cease to discharge the duties thereof; but the said Ashburner

refused, and still refuses, to comply with such demand—the said demand having been made after the qualification of said Commissioners, and before the commencement of this action.

VI. Said defendant has, ever since the passage of the said Act last aforesaid, continued to discharge the duties of such Commissioner as first aforesaid, and has during all that time claimed, and still claims, that he is by law entitled to be such Commissioner, and to be a member of said Board of Commissioners as organized and existing at the time of the passage of said last mentioned Act, and to exercise and discharge all the powers, authority, and duties of such Commissioner, and of a member of such Board of Commissioners; he claiming and insisting that said Board of Commissioners, and the members thereof, continue to be and are such Board, and the members thereof, notwithstanding the passage of said Act, approved April 15, 1880, and the alleged appointment by the Governor of the members of the Board of Commissioners on the nineteenth day of April, 1880, as mentioned in the fourth paragraph hereof.

The Act of Congress of June 30, 1864 (*U. S. Stats. at Large, 1863-4, p. 325*), provides: "There shall be and *is hereby granted to the State of California* the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the County of Mariposa, in the State aforesaid, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches," etc., "with the *stipulation*, nevertheless, *that the said State shall accept this grant with the express conditions* that the premises shall be held for *public use, resort, and recreation*, shall be inalienable for all time,

but leases not exceeding ten years may be granted for portions of said premises. All incomes to be derived from leases of privileges to be expended in the preservation and improvement of the property or the roads leading thereto. * * * The premises to be managed by the Governor of the State, with eight other Commissioners, to be appointed by the Executive of California, who shall receive no compensation for their services."

It will be observed that by the terms of the Act of Congress the grant *to the State of California* was to take effect when the State should *accept*, with certain conditions: "With the *stipulation*, nevertheless, that the said State *shall accept this grant with the express conditions*," etc. When the Act of Congress was passed, there was no perfected agreement with the State; the Act was a proffer to the State, and was to operate a grant, provided the State should join in the stipulation that certain conditions—in the nature of conditions subsequent—should be by it assumed. It is not necessary to inquire whether by any legal proceedings, based upon a forfeiture, the land could be recovered by the Federal Government in case the State should fail to comply with the obligations by it assumed with reference to the subject of the grant, or whether the Yosemite Valley passed forever to the State in reliance upon the pledged honor of the State that it should be preserved, dedicated, and managed as contemplated by the Act of Congress. No provision of the Act of the California Legislature of April 15, 1880, has been called to our attention as being in itself a violation of any one of the conditions named in the Act of Con-

gress or of any part of the stipulation entered into by the State.

By the first section of the Act of April 2, 1866 (*Stats of California, 1865–6, p. 710*), the Legislature *accepted* the grant for the State "upon the conditions, reservations, and stipulations contained in said Act of Congress," and thereby became bound to carry into effect the stipulation which it had entered into, and which the Act of Congress had required should be entered into, as a condition to the grant becoming operative. By accepting the grant upon the stipulations contained in the Act of Congress, the State assumed the duty of providing by appropriate legislation, (1), for inalienably preserving the premises for public use, resort and recreation; (2) prohibiting leases of any portion for a longer term than ten years; (3) for the application of all "incomes" to the preservation or improvement of the property or of roads leading thereto; (4) authorizing the Governor to appoint eight Commissioners, who with himself shall without compensation "manage" the premises.

The fact that the Legislature, on the 2d of April, 1866, discharged its duty (by legislation with reference to the several subjects with respect to which legislation was pledged by the acceptance of the grant), *in the same Act* as that which contained the acceptance, does not affect the question we are considering.

The grant was accepted, upon the conditions, etc., and the rest of the Act may be treated as if it were a separate and subsequent law—a law which may be changed as often as the representatives of the people of the State may deem it proper; provided the stipulation or pledge of the State given when the grant was accepted is not violated.

There can be no doubt that by accepting the grant the State assumed certain obligations in the *nature* of a trust which it would be a violation of good faith to disregard. We know of no way by which these obligations can be enforced in a State Court; but, however this may be, we are quite certain that as yet no violation of the duties imposed upon the State by her acceptance of the grant has occurred.

It is urged by counsel for respondent that the Act of Congress and the statute of the State created a "charity." In a larger sense this is true, since the legislation, national and State, while placing the legal title in the State, was intended to operate as a gift to the general public use, free from "the taint of every consideration, personal, private, and selfish." But when we inquire whether the result is a *gift for charitable uses* such as may be *regulated, directed, and enforced by a Court of equity*, we are met by insurmountable obstacles to the conclusion that the matter is within any branch of equitable jurisdiction of which this Court can take cognizance. It is a dedication to the public brought about by the combined action of the Federal and State Governments. The State is the trustee—if there be a trustee—but a trustee whom this Court has no power to remove. We cannot enforce any decree with respect to the mode or manner in which the State shall discharge the duties it has assumed. *(Hill on Trustees, 49; Perry on Trusts, 40, 41.)* The Commissioners are mere agents of the State, who bear no relation (other than that borne by other citizens) to the Government of the United States, but whose duties are defined and whose powers exercised under and by virtue of State laws alone. Persons thus clothed with functions affecting the public, assigned to

them by State laws, are *officers* of the State. *(33 Ga., 332; 23 Ind., 449; 12 Id., 569; 37 N. Y., 518.)*

The nature of the title created by the Federal and State legislation must depend simply upon the Act of Congress and the State statute. Upon a reference to them we can discover but a distant analogy between the present and the cases cited in the able and ingenious brief of counsel for respondent.

In Price vs. Maxwell *(28 Pa. St., 23)*, it was held that a devise to a *school*, where both rich and poor were taught, and religious was combined with literary and scientific instruction, was for charitable uses. Jones vs. Williams, *2 Amb., 651*, was a bequest of money to be applied to the purchase of water-works for the inhabitants of a town. Held, a charitable use void by the statute mortmain. McDonough vs. Murdock, *15 How., 367*, determined the validity of legacies, for charities to the cities of Baltimore and New Orleans; and held, *inter alia*, that the cities were authorized to take by the laws of Maryland and Louisiana. In Mitford vs. Reynolds *(1 Phillips, 105)*, it seems to have been assumed that a devise to the "Government of Bengal" was a devise to the Governor-General as an individual. In Attorney-General vs. Heelis *(1 Sim. Stu., 67)*, it was said that a fund derived wholly from assessments under an act of Parliament, and not at all from bounty, was not a charitable fund to be administered by a Court of equity. Webb vs. Neale *(5 Allen, 875)*, and Coggeshall vs. Pelton *(7 Johns. Ch. 292)*, decide that certain cities were competent to be trustees. In Inglis vs. Trustees of Sailors' Snug Harbor *(3 Peters, 99)*, it was held that a bequest to the Chancellor of the State of New York, was equivalent to a designation of that officer by

his proper name, and the trust was to be executed by him in his individual character. In Nightingale vs. Colbourne *(2 Phil., 594)*, that a bequest to the Chancellor of the Exchequer was a bequest to the holder of the office.

It may be admitted that one may sometimes be charged as trustee who is clothed with a power with reference to real estate, although the legal title may not be vested in him. It is very possible, that, in a proceeding brought by the State, the Yosemite Commissioners might be compelled to an accounting, etc., in case of misappropriation of funds. But this would not make them any the less officers, nor could it affect the question of the power of the Legislature to provide for their removal and the appointment of other persons in their stead. The statute of April 15, 1880, like that of April 2, 1866, provides for eight Commissioners to be appointed by the Governor, who, with that officer, are required to *manage* the property in accordance with the stipulation entered into by the State when the grant was accepted. Inasmuch as the Commissioners originally appointed were officers, their term of office expired four years after their appointment. (*Constitution of* 1849, Article 10, Section 7; *Constitution of* 1879, Article 20, Section 16.)

Judgment reversed and cause remanded with direction that the Court below enter judgment as prayed for in the complaint.

McKINSTRY, J.

We concur:

SHARPSTEIN, J.
MYRICK, J.
McKEE, J.

I dissent, and will hereafter file an opinion.

THORNTON, J.

I, FRANK W. GROSS, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed contains a true and correct copy of the original opinion delivered in the above entitled cause, on the 14th day of August, A. D. 188 0, and now on file in my office.

WITNESS my hand and the seal of the Court, this 27 day of Oct., A. D. 188 0.

(Seal)

F. W. Gross Clerk.

By C. N. Post Deputy.

FILED
OCT 8 1880
JAMES H. McKENNEY, Clerk.

No.....

IN THE SUPREME COURT OF THE UNITED STATES.

WILLIAM ASHBURNER,

Plaintiff in Error,

VS.

THE PEOPLE of the STATE OF CALIFORNIA,

Defendants in Error.

Argument of Plaintiff in Error.

ALFRED BARSTOW,

Attorney for Plaintiff in Error.

AMANDA M. SLOCUM, Printer, 613 Clay St.

IN THE SUPREME COURT

OF THE

UNITED STATES.

WILLIAM ASHBURNER,
Plaintiff in Error.

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Defendants in Error.

PLAINTIFF'S ARGUMENT.

STATEMENT OF THE CASE.

This is an action in the nature of a writ of *quo warranto.*

The United States, by virtue of the Act of Congress of June 30th, 1864—13 U. S., Stats. 325—granted to the State of California, the Yosemite Valley and the Mariposa Big Tree Grove. The first section provides that the Yosemite Valley shall be and is hereby granted to the State of California "with the stipulation, nevertheless, that the said State shall accept this grant upon the express conditions that the premises shall be held for *public use, resort and recreation*, and shall be inalienable for all time, * * * the premises to be

managed by the Governor of the State, with eight other Commissioners, to be appointed by the Executive of California, who shall receive no compensation for their services."

The Legislature of the State, on the 2d of April, 1866, passed an Act—a copy of which is hereto appended.—statutes 1864, p. 710—which, in the preamble, recited in substance the above mentioned Act of Congress, and by the first section enacted, that "The State of California does hereby accept said grant upon the conditions, reservations and stipulations contained in said Act of Congress." The remaining sections are not material to any inquiry arising in this case.

In the meantime, Fred'k F. Low, the Governor of the State, appointed eight Commissioners, who, with the Governor, constituted a Board of Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove. One of the Commissioners so appointed was William Ashburner—the plaintiff in error—and he accepted the oppointment, and has continuously acted as such Commissioner. Some of the other Commissioners have died or resigned, and the vacancies thereby caused, have, as they occurred, been filled by the then Governor of the State.

Section 16, of Art XX, of the Constitution of 1879, —which is substantially the same as Sec. 7, of Art. XI of the Constitution of 1849—declares that "When the term of any officer or commissioner is not provided for in this Constitution, the term of such officer or commissioner may be declared by law; and, if not so declared, such officer or commissioner shall hold his position as such officer or commissioner, during the pleasure of the authority making the appointment; but in no case shall such term exceed four years." The State Legislature, being of the opinion that the

Commissioners, whose appointment was provided for by the said Act of Congress, were officers of the State government, and, that as such State officers, they were subject to the provisions of the section of the Constitution above cited, passed the Act entitled "An Act to provide for the management of the Yosemite Valley and the Mariposa Big Tree Grove," approved April 15, 1880, (Stats. 1880, p. 205). Two of the sections, only, are involved in this litigation, which are as follows:

"Section 1. The Governor of the State of California, and the eight other Commissioners appointed by him in accordance with the Act of Congress, entitled 'An Act authorizing a grant to the State of California of the Yosemite Valley and the Mariposa Big Tree Grove,' approved June thirteenth, eighteen hundred and sixty-four, shall constitute a Board to manage such premises, and the Governor shall be *ex-officio* member of the Commission and President of the Board. The Term of office of the Commissioners shall be four years; *provided*, that the eight first appointed shall so classify themselves, that four shall go out of office in two years, and four in four years; and thereafter the appointments shall be made four each two years. Vacancies occurring in said Commission from death, resignation, or other causes, shall be filled by appointment, by the Governor, to serve for the unexpired term only."

"Sec. 5. The said Commission shall, immediately after organizing, demand from the Commissioners now acting, all the books, papers, and documents of any and every kind, pertaining to the business of the Board, and it shall be the duty of the Commissioners now acting to immediately comply with said demand."

The Act took effect upon its passage.

The Governor, four days after the passage of that Act, and in pursuance of its provisions, appointed eight Commissioners, and each of the persons so appointed, accepted the appointment, and took the oath of office prescribed by law for State officers. The Board of Commissioners so appointed, and each member thereof, demanded of Wm. Ashburner, that he surrender the said office of Commissioner, and cease to discharge the duties thereof, but he refused to comply with the demand.

The Complaint alleges that Ashburner usurped the office of Commissioner, etc., and unlawfully withholds, and continues to discharge the duties of that office; and prays that he be ousted from said office.

The answer is a general denial.

Upon the trial of the action, the Superior Court found, as true, all the facts recited in a stipulation, which was introduced in evidence, and which the Court annexed to, and made a part of, its findings; and the Court thereupon found as conclusions of law, and adjudged that William Ashburner, who was appointed by the Governor of said State, as a Commissioner under and by virtue of said Act of Congress, and the said Statute of said State approved April 2d, 1866, was not an officer of said State; that the plaintiffs are not entitled to the relief prayed for in the complaint; and that the defendant, William Ashburner, is entitled to judgment, etc.

From that judgment an appeal was taken by the plaintiffs—The People—to the Supreme Court of the State; and that Court reversed the judgment of the Superior Court, and ordered judgment to be entered as prayed for in the complaint.

ASSIGNMENT OF ERRORS.

Supreme Court of the United States.

WILLIAM ASHBURNER,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
} *In Error.*

And now comes the said plaintiff in error, by Alfred Barstow, his attorney, and says that in the record and proceedings aforesaid, there is manifest error, in this, to wit:

1st. That the complaint aforesaid, and the matters therein contained, are not sufficient in law for the said People of the State of California to have or maintain their aforesaid action thereof against the said William Ashburner.

2d. That upon the pleadings and the findings of fact aforesaid, judgment should have been given for the said Ashburner, against the said People of the State of California.

3d. That the said Court erred in holding and deciding that the said Ashburner, by virtue of his appointment as such Commissioner, as aforesaid, became an officer of the government of said State.

4th. That the said Court erred in holding and deciding that the Legislature of said State could fix the term for which the Commissioners appointed pursuant to said Act of Congress, should continue to be and act as such Commissioners.

5th. That the said Court erred in holding and deciding that the State could or did, by virtue of the said statute of April 15, 1880, remove the Commissioners, or confer upon the Governer the power to appoint new Commissoners to manage the trust property.

6th. That the said Court erred in not holding and deciding that the said Act of Congress and the statute of 1866 conveyed the property to the State, in trust, and that the Commisioners provided for in said Act of Congress became, upon their appointment, trustees to manage the property.

The plaintiff in error prays that said judgment may be reversed, etc.

POINTS AND AUTHORITIES.

I.

THE ACT OF CONGRESS CREATED A TRUST,—THE STATE BEING CREATED THE TRUSTEE OF THE TITLE, AND THE COMMISSIONERS THE TRUSTEES FOR THE MANAGEMENT OF THE PROPERTY.

This is obvious upon an inspection of the Act. The State, by the passage of the statute of April 2d, 1866, accepted the trust, and the grant thereupon took effect.

The Yosemite case, 15 Wall. 94.

The Commissioners, upon their appointment by the Governor, and their acceptance thereof, became trustees for the management of the property. Being such trustees, they are subject only to the same control that trustees created by private parties would be; unless further power or control was given by the law of their creation. Here, the Act of Congress is silent in that respect.

II.

THE ACT OF CONGRESS, AND THE STATE STATUTE OF 1866, CREATED A CONTRACT BETWEEN THE UNITED STATES AND THE STATE; AND ONE PARTY—THE STATE—HAD NO POWER THEREAFTER TO ALTER OR ADD TO THE TERMS OF THE CONTRACT.

All that the State was authorized or required to do, in order that the grant proposed by the Act of Congress might take effect, was *simply to accept* the same upon the offered terms; any further provision in the State statute, than that, would prevent the grant from taking effect, until assented to by Congress, or it would be simply void.

The Yosemite case, supra, is conclusive upon the proposition that the grant did take effect, and it follows inevitably, we think, that *one party* cannot alter or add to the terms or conditions of the contract. An addition to, or an alteration of the terms of a contract, is an impairing of the obligation of the contract, within the meaning of the Constitution, Art. I, Sec. 10. That provision is applicable to contracts, to which a State is a party.

Fletcher vs. Peck, 6 Cranch, 133.
Terrett vs. Taylor, 9 Cranch, 43.
Green vs Biddle, 8 Wheat. 1.
Cooley Const. Limit., 274, and cases cited.

III.

THE TRUST CREATED BY THE GRANT, AND ITS ACCEPTANCE BY THE STATE, IS A CHARITABLE TRUST.

Lord Chancellor Camden defines a charity as "a gift to general public use, which extends to the poor as well as the rich."

Mr. Binney, in the Girard Will case, (Price vs. Maxwell, 28 Pa. St. 35) defines a charitable or pious gift to be "whatever is given for the love of God, or for the love of your neighbor, in the catholic and universal sense—given from these motives and to these ends, free from the stain or taint of every consideration that is personal, private and selfish."

In Jones vs. Williams, Amb. 652, it is defined as "a gift to a general public use, which extends to the poor as well as the rich."

(In that case to supply water to the town of C.)

INSTANCES OF GIFTS FOR CHARITIES.

Universities	British Museum
Churches	Colleges
Schools	Hospitals
Asylums	Halls
Societies	Water Works

To supply city with water.

Botanical Garden.

For improvement of a city, to be carried on under Act of Parliament.

Boyle on Charities, p. 51.

Devise to New Orleans and Baltimore for the education of poor, and certain other purposes, 5 Howard, 400, (McDonough vs. Murdock) to be managed by a Board to be designated, as provided in the *will.*

Bequest to Government of Bengal, for charitable, beneficial and public works at the City of Dacca.

Mitford vs. Reynolds, 1 Phillips, 185.

It is immaterial from *what source* the funds are derived.

Sir John Leach, in Attorney-General vs. Heelis, 2 Sim & Stu. 67, says that funds supplied from the gift of the crown, or of the Legislature, or from private sources, for any legal, public or general purpose, are charitable gifts, to be administered by Courts of equity.

Perry on Trusts, §§ 707, 30.

The crown, the state, the municipal corporation, a county, etc., may be a trustee.

Perry on Trusts, §§ 40, 41.
Mitford vs. Reynolds, 1 Philips, 185.
Hill on Trustees, 52.
Webb vs. Neale, 5 Allen, 575.
(City may be.)
Cogswell vs. Pelton, 7 Johns Ch. 292.
(City created a trustee.)
Ambler 422. Municipal Corp. for Water Works.
Boyle on Charities, 52–54.
(Grant from the *crown* of land to *town*.)
McDonough vs. Murdock, 15 How. 400.

IV.

The Commissioners appointed under the Act of Congress are not officers, but are trustees.

In Inglis vs. Trustees of Sailors' Snug Harbor, 3 Peters, 99, the bequest was to the Chancellor of the State of New York, and the Mayor, Recorder, etc., of New York. Will directed that, if necessary, application to legislature for act incorporating them. Application was made and act passed. The Court say that the designation of the trustees, by their official character, was equivalent to naming them by their proper names—that it was a *designatio personæ*—and that the trust was to be executed by them in their *individual* capacity.

In Nightingale vs. Colbourne, 2 Phil. 594.

The bequest was to the Chancellor of the Eqcheq-uer,—held, a bequest to the holder of the office—he taking as a trustee.

In New vs. Bonaker, Law Rep., 4 Eq. cases, 655.

Bequest was to President and Vice-President and the Governor of Pennsylvania. The Vice-Chancellor

speaks of it as a gift to the President, etc., for the time being.

See McDonough vs. Murdock, 15 How. 400.

In all the above cases, and numberless others that might be cited, the Courts of Equity exercised the superintendence, care and management of the funds. The Court, as every lawyer knows, makes its decrees and orders effectual only by means of process directed to the person; and it is obvious that the Court could exercise no control over those several matters, if those having the management of the funds and property, were acting as officers. No one ever heard of the removal of an officer, by a Court of Equity, for official misconduct. What would be said of a bill filed for the removal of the Vice-President or Secretary of State, for mismanagement of the funds bequeathed to the United States by James Smithson?—or of the Mayor of New York for some alleged dereliction connected with the Sailors' Snug Harbor?

The Commissioners are none the less trustees because the *entire title* to the property devoted to the charity was not vested in them. The Commissioners have power to make leases, not exceeding ten years, and may grant or lease "privileges"—but they are trustees, though the whole title is not in them.

Perry on Trusts, § 308

Osgood vs. Franklin, 2 Johns Ch. 18.

V.

The Commisioners, as Trustees, are subject to the control of the Ccurt of Equity.

It is presumed that no citation of authority is needed in support of this proposition. The power of the Court over trustees, necessarily results from its juris-

diction of trusts. Under the statute of 43 Elizabeth, the right to superintend the care and management of charities is to be exercised by the High Court of Chancery.

Boyle on Charities, 12–14.
2 Perry on Trusts, § 692.

VI.

The Governor has no power of removal.

This power not being expressly given to him, and the Court of Equity having ample power in that regard, there is neither necessity nor propriety in resorting to implication to add to the power of the Governor. He is himself only one of the Commissioners, after the eight Commissioners are appointed. There would be as much legal propriety in the eight Commissioners removing him, as in his removal of one of them.

But the Governor has not attempted to exercise that power. He has simply attempted to obey the Legislature, which, not having been empowered so to do by Congress, has *usurped the power* of devising a new appointment of Commissioners.

VII.

The Legislature has no power to fix the period during which the Commissioners shall act as such.

This proposition necessarily results from the propositions already laid down. It will be remembered that the attempted grant of a portion of the Yosemite Valley, by the act of this State, was held to be inoperative until ratified by Congress. (The Yosemite Valley case, 15 Wall., 94) and it is equally clear that any other act of the State, attempting to regulate this matter in any respect, will stand in need of the ratification of Congress, to give it any validity.

VIII.

IF THE COMMISSIONERS ARE IN ANY SENSE OFFICERS, THEY ARE FEDERAL, AND NOT STATE OFFICERS.

The State Courts, in naturalization proceedings act under the authority of Congress, and are, *for that purpose, Federal Courts.*

Matter of Ramsden, 13 How. Pr., 429.
People vs. Sweetman, 3 Parker, Cr., 358.

By three several acts of Congress, the County Courts of New York, Pennsylvania and Ohio were authorized to take cognizance of certain penalties, etc., arising under the revenne law. 1 Kent, 306. In cases of that character, and those arising under the Fugitive Slave Law, and in naturalization proceedings, the State Courts exercised the powers conferred, by a sort of State comity; and in their exercise, the Courts acted as Federal Courts.

Had Congress named the Commissioners, and given the Governor power to fill vacancies, would it have been claimed that the appointees of the Governor were State officers? Or had the United States retained the title to the valley, leaving the rest of the act in its present form, would there be any ground to claim that the Commissioners derived any authority from the State, or were in any sense State officers?

It will, of course, be conceded by the plaintiffs, that if the Commissioners are trustees, or, if officers, that they are Federal officers, the present action cannot be maintained.

The plaintiff in error prays that the judgment of the Supreme Court of the State may be reversed, with costs, and that the cause be remanded with directions to affirm the judgment of the said Superior Court.

ALFRED BARSTOW,
Atty. for Plff. in Error.

APPENDIX.

CHAP. DXXXVI.—*An Act to accept the grant by the United States Government to the State of California of the Yosemite Valley, and of the land embracing the Mariposa Big Tree Grove, and to organize the Board of Commissioners, and to fully empower them to carry out the object of the grant and fulfil the purposes of the trust.*

[Approved April 2, 1866.]

WHEREAS, by an Act of Congress entitled an Act authorizing a grant to the State of California of the Yosemite Valley, and of the land embracing the Mariposa Big Tree Grove, approved June thirteenth, A. D. eighteen hundred and sixty-four, there was granted to the State of California in the terms of said Act, said valley and the lands embracing said grove upon certain conditions and stipulations therein expressed; now, therefore,

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The State of California does hereby accept said grant upon the conditions, reservations and stipulations contained in said Act of Congress.

SEC. 2. The Governor and the eight other Commissioners, Frederick Law Olmstead, Professor J. D. Whitney, William Ashburner, I. W. Raymond, E. S. Holden, Alexander Deering, George W. Coulter, and Galen W. Clark, appointed by him on the twenty-eighth day of September, eighteen hundred and sixty-four, in accordance with the terms of said Act, are hereby constituted a Board to manage said premises, and any vacancy

occuring therein from death, removal, or any cause, shall be filled by the appointment of the Governor. They shall be known in law as "The Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove," and by such name they and their successors may sue and be sued, and shall have full power to manage and administer the grant made and the trust created by said Act of Congress, and shall have full power to make and adopt all rules, regulations, and by-laws for their own government, and the government, improvement, and preservation of said premises not inconsistent with the Constitution of the United States or of this State, or of said Act making the grant, or of any law of Congress or of the Legislature. They shall hold their first meeting at the time and place to be specified by the Governor, and thereafter as their own rules shall prescribe, and a majority shall constitute a quorum for the transaction of business. They shall elect a President and Secretary, and any other officers from their number as their rules may prescribe.

SEC. 3. None of said Commissioners shall receive any compensation for their services as such. They shall have power to appoint a Guardian, either of their number or not, of said premises, removable at their pleasure, to perform such duties as they may prescribe, and to receive such compensation as they may fix, not to exceed five hundred dollars per annum.

SEC. 4. The Commissioners shall make a full report of the condition of said premises and of their acts under this law, and of their expenditures, through the Governor, to the Legislature, at every regular session thereof.

SEC. 5. The State Geologist is hereby authorized to make such further explorations on the said tracts and

in the adjoining region of the Sierra Nevada Mountains as may be necessary to enable him to prepare a full description and accurate statistical report of the same, and the same shall be published in connection with the reports of the Geological Survey.

SEC. 6. It shall be unlawful for any person wilfully to commit any trespass whatever upon said premises, cut down or carry off any wood, underwood, tree, or timber, or girdle or otherwise injure any tree or timber, or deface or injure any natural object, or set fire to any wood or grass upon said premises, or destroy or injure any bridge or structure of any kind, or other improvement that is or may be placed thereon. Any person committing either or any of said acts without the express permission of said Commissioners through said Guardian shall be guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five hundred dollars or by imprisonment in the County Jail not exceeding six months, or by both such fine and imprisonment.

SEC. 7. The sum of two thousand dollars is hereby appropriated for the eighteenth and nineteenth fiscal years out of any moneys in the Treasury not otherwise appropriated to pay said Guardian and the incidental expenses of the Commissioners and to be expended under the supervision of said Commissioners; *provided*, that not more than one half of said sum shall be expended during the eighteenth fiscal year.

SEC. 8. This Act shall take effect immediately.

OFFICE SUPREME COURT U.S.
FILED
OCT 19 1880
JAMES H. McKENNEY, Clerk.

No. .....

IN THE

SUPREME COURT OF THE UNITED STATES.

WILLIAM ASHBURNER,

Plaintiff in Error,

VS.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Defendants in Error.

Argument of Defendants in Error.

J. H. McKune
Attorney for Defendants in Error.

A. P. Catlin
of counsel

SACRAMENTO:
STATE OFFICE : : : J. D. YOUNG, SUPT. STATE PRINTING.
1880.

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WILLIAM ASHBURNER,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Defendants in Error.

Argument on Behalf of Defendants in Error.

This is an action to determine the right of plaintiff in error to hold the office of a member of the "Board of Commissioners to Manage the Yosemite Valley and Mariposa Big Tree Grove."

The Supreme Court of California found that the position of Commissioner upon said Board is an office

within the meaning of the Constitution and statutes of the State, and gave judgment in favor of the defendant in error.

The case, as shown by the stipulation of facts, beginning at page 4 of the Transcript, is as follows:

The Yosemite Valley and Mariposa Big Tree Grove were granted to the State of California by an Act of Congress, approved June 30th, 1864, with the stipulation expressed in the Act, that the State should accept the grant upon the express conditions that the premises should "be held for public use, resort, and recreation; shall be inalienable for all time; * * * the premises to be managed by the Governor of the State, with eight other Commissioners, to be appointed by the Executive of California, and who shall receive no compensation for their services."

U. S. Stats. at Large, 1863–4, p. 325.

The State, by Act of its Legislature, approved April 2d, 1866, accepted the grant upon the conditions named, ratified the appointment of the Commissioners previously appointed by Governor Low, clothed them with power to carry out the purposes of the grant, and appropriated money to pay the Guardian of the Valley, and the incidental expenses of the Commissioners for the ensuing two years.

Statutes of Cal., 1865–6, p. 710.

The plaintiff in error and seven others were appointed to be Commissioners to manage the Valley, by Governor Low, on the 28th of September, 1864, and the Board, as thus constituted, has continued to act as such without reappointment, until the present time.

Pursuant to Senate Concurrent Resolution No. 20, of February 17th, 1880 (Stats. of Cal. 1880, p. 240), and an Act of the Legislature, approved April 15th, 1880 (Stats. of Cal. 1880, p. 44), Governor Perkins appointed a new Board of Commissioners, of which the plaintiff in error is not a member. Upon demand being made of him, he refused to give up his office, on the ground that he does not hold an office of the State, subject to the control of the Legislature, as to its duration and term.

I.

The said position of Commissioner is an office within the meaning and intent of the statutes of this State, and of the provisions of the State Constitution limiting the duration of the terms of those officers whose terms are not otherwise limited. Section 343 of the Political Code, in the enumeration of the civil executive officers of this State, mentions the "Nine Commissioners of the Yosemite Valley and Mariposa Big Tree Grove."

Political Code of Cal., Secs. 343, 357.

The Act of Congress vested in the State of California the title to the said valley and grove, subject only to be defeated by the breach of certain conditions subsequent, mentioned and specified in the Act.

U. S. Stats. at Large, 1863–4, p. 325.

From and after that time the management of the lands was in the hands of the State government, and it has since had the right absolutely to control and direct the management of the granted premises, subject only to the conditions contained in the grant.

By the statute accepting the grant, the duties and powers of the Commissioners were prescribed, and in them was vested the power and authority to make "rules, regulations, and by-laws for their own government and *the government* * * * of said premises.

Statutes of Cal. 1865–6, p. 710.

Under said Act they also have the power to appoint a Guardian, removable at their pleasure, to prescribe his duties, and fix his compensation. The duties are all of a public nature, and constitute a part of the civil government of the State.

"When an individual has been appointed or elected in the manner provided by law, and exercises functions affecting the public, assigned to him by law, he must be regarded as a public officer."

Bradford vs. *Justices, 33 Ga. 332.*
Leach vs. *Cassidy, 23 Ind. 449.*
Waldo vs. *Wallace, 12 Ind. 569.*
Smith vs. *Mayor, etc., 37 N. Y. 518.*

All of the above authorities hold that an office is but the right to exercise a public function or employment.

Abbott says: "The most frequent occasions to use the word 'office' arise with reference to a duty and power conferred on an individual by the Government; and when this is the connection 'public office' is the usual and more discriminating expression."

Abbott's Law Dictionary, 200.
People vs. *Hayes, 7 How. Pr. 248.*
People vs. *Bedel, 2 Hill. 196.*

These Commissioners are, therefore, public officers, because they receive their appointments from and are accountable to the State, and because they perform duties prescribed by law which concern the public and are of a public nature.

II.

These Commissioners are officers of the State, and not of the Federal Government. The title to the lands is in the State, and while a failure of the Commissioners to manage the premises in the manner stipulated in the grant might work a forfeiture, it cannot be claimed that the Governor of the State, or any other of the Commissioners, is responsible to the Government of the United States for the faithful performance of his duties. The stipulation in the grant is simply that the State shall own the property; provided that in the management of the property it shall employ certain agencies. It cannot be claimed that the Governor, elected by the people of this State, is a Federal officer, and yet he is one of the Commissioners; nor can it be maintained that the other Commissioners, who received their appointments from the Governor, are Federal officers.

They are all the agents of the State; their duties and powers are defined and fixed by a law of the State, and are confined to the management of the property of the State; their traveling expenses are paid out of funds provided by the State; and they have the power to appoint and fix the compensation of a Guardian, whose compensation is paid out of the State treasury. It would seem clear, therefore, that said Commissioners are all State officers.

III.

The terms of those officers are limited to four years from the date of appointment, by the State Constitution. Section seven of Article twelve of the old Constitution provided: "When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment; *nor shall the duration of any office not fixed by this Constitution ever exceed four years.*"

Substantially the same provision is contained in the new Constitution; the only difference being the addition of the words "or Commissioner," after the word office.

It is clear, from these provisions, that the terms of these officers, not being fixed by the Constitution, expired long prior to the appointment of the new Commissioners, and that the Governor, under the Act of April 15th, 1880, had the right to appoint the new Board.

Statutes of Cal 1880, pp. 44, 240.

IV.

It is claimed upon the part of the plaintiff in error, however, that the Act of Congress granting these lands created a trust, the State of California being the trustee of the title, and the Commissioners being the trustees for the management of the property. This point involves three propositions, the first two of which may be admitted without materially affecting the position taken by the defendants in error.

It will be observed that the grant was to the State, upon the condition that the State would assume certain trusts in the management of the property. Upon the acceptance of the grant, the legal title immediately vested in the State, subject only to be defeated by a failure to perform the conditions. If, as claimed by the plaintiff in error, a trust estate was created, the estate vested in the State of California, which thereby became the trustee, holding the title in trust for the persons and to the uses mentioned in the grant. "A trust is a confidence reposed in some other, not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, and to the person touching the land, for which *cestui que trust* has no remedy but by subpœna in chancery."

Co. Lit. 272b.

The person in whom the confidence is reposed is the trustee. In this instance the land was granted upon the condition that the State would manage it in a certain manner through the intervention of the Commissioners who were to be appointed by the Governor. The land was granted to the State upon the faith that it would, by its Commissioners, manage the property in accordance with the requirements of the Act. No estate was conveyed to Ashburner, nor was any confidence reposed in him, or any of the other Commissioners, by the grantor. The confidence reposed was that the State, by its chief executive, would appoint the proper number of suitable agents who could and would on behalf of the trustee—the State—manage the property in accordance with the stipulations contained in the grant.

If, therefore, a trust was created by the grant, it seems clear that the State is the trustee, and the Commissioners are only the agents and officers of the State, whose duty it is, on behalf of the State, to execute the trust.

It can hardly be assumed that these officers, appointed by the authority of the State, are, after their appointment, beyond the control of the State; if such were the case, these Commissioners might persist in making systematic breaches of the conditions contained in the grant, by which a forfeiture of the premises might be worked, and the State would be powerless to defend itself against their misconduct, or to remove them for malfeasance.

Defendants in error therefore pray for an affirmance of the judgment of the Supreme Court of California, with costs.

A. A. McKune

Attorney for Defendants in Error.

A. P. Catlin

Of Counsel